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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

January 19, 1996

VIA COURIER

The Honorable Reed E. Hundt
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Ex Parte Presentation
Implementation of Sections 3(n) and 332 of
the Communications Act, GN Docket No. 93-252

Dear Mr. Chairman:

The purpose of this letter is to request the Commission's immediate consideration and disposition of the Petition for Reconsideration (the "Petition") filed by Cellular Service, Inc. and ComTech, Inc. ("CSI/CTI") on May 19, 1994 in the above-referenced matter.

Although the Petition was filed twenty (20) months ago, it is our understanding that no action -- imminent or otherwise -- is contemplated on the Petition. The Commission's delay is not only adverse to the interests of CSI/CTI but also to the larger public interest -- which the Commission has expressly endorsed -- in the promotion of a more competitive environment in the provision of mobile communications services.

CSI and CTI are resellers of cellular service in California with more than 60,000 subscribers. Over the last several years, CSI and CTI have invested hundreds of thousands of dollars in the development of a switch to be used by cellular resellers to interconnect with the Mobile Telephone Switching Offices ("MTSO") of the cellular carriers. CSI and CTI have made the foregoing commitment of time, money and energy in the belief that the switch will enable CSI and CTI to provide the public with innovative services and more competitive rates.

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In early 1994 CSI and CTI provided the Commission with information concerning the benefits of their proposed switch and a request for Commission recognition of a cellular reseller's right to interconnect with the carriers' MTSOs. CSI and CTI further explained the need for a rapid Commission decision.

In its Second Report and Order, 9 FCC Rcd 1411 (1994), the Commission nonetheless deferred consideration of the question whether cellular resellers have a right to interconnect with cellular carriers under Section 201 of the Communications Act of 1934, as amended (the "Act"). CSI/CTI filed their Petition on May 19, 1994 and requested reconsideration of the Commission's decision to defer the issue to a notice of inquiry (which became CC Docket 94-54). More specifically, the Petition demonstrated (1) that cellular resellers have a right of interconnection under Section 201 of the Act, (2) that the right of interconnection for common carriers like CSI and CTI must be recognized if the interconnection would be privately beneficial without being publicly detrimental, AT&T, 60 FCC 2d 939, 943 (1976), (3) that CSI/CTI had expended substantial sums in the investment of a reseller switch to provide services to subscribers that would be innovative and cost-effective, and (4) that, whatever policies were to be adopted with respect to future Commercial Mobile Radio Service ("CMRS") providers, there is no basis to defer any recognition of a cellular reseller's right to interconnect its switch with the cellular carrier's MTSO. A copy of CSI/CTI's petition is annexed hereto.

The Commission received considerable comment from interested parties -- including other cellular resellers as well as cellular carriers -- with respect to CSI/CTI's Petition (which was attached to CSI and CTI's comments in CC Docket No. 94-54). CSI and CTI also submitted a report in July 1995 from Ericsson, Inc. -- which manufactures switches for cellular carriers -- reporting the results of a pilot test which demonstrated the feasibility of the cellular reseller switch.

To date, the Commission has stated that it is not yet prepared to conclude that the "reseller switch proposal" advanced by CSI/CTI should "be generally imposed upon CMRS providers at this time." Second Notice of Proposed Rulemaking, FCC 95-149 (April 20, 1995) at ¶ 95. However, CSI/CTI never proposed that their switch proposal be applied to every CMRS provider -- only cellular resellers. Personal Communications Services, Enhanced Specialized Mobile Radio systems, and other new technologies are still in nascent stages of development, and the Commission's refusal to address interconnection policies for those new CMRS providers may be reasonable. However, the Commission should not utilize uncertainty with respect to those other new technologies to forestall a decision on interconnection rights for parties who resell cellular service, which is a long established service. This is especially so since the Commission remains free to subject CSI and CTI to whatever new interconnection policies are later applied to all CMRS providers. See Quincy D. Jones, FCC 95-497 (Dec. 12, 1995)(approval of broadcast transfer applications conditioned on outcome of pending rulemaking on attribution standards and cross-interest policy).

It should be emphasized that CSI and CTI have asked for nothing more than a recognition by the Commission of the right to interconnection. Any particular interconnection arrangement would then have to be negotiated (in the absence of applicable rules) with the affected cellular carrier(s). Only at that juncture could the reseller order and install the particular switch. In short, even an immediate recognition of a cellular reseller's right to interconnection with a cellular carrier's MTSO would not mean immediate implementation.

CSI/CTI have learned from the Commission's staff that there is no schedule to bring CSI/CTI's Petition to the full Commission for decision and that, in any event, that matter will probably not be addressed until after the Commission renders a decision on resale policies for other CMRS providers. Since that latter item is likewise in a state of suspension, there appears to be no likelihood that any Commission action will be taken on CSI/CTI's Petition in the near future.

The Commission's failure to act means that CSI/CTI and other cellular resellers are being foreclosed from capitalizing on their investment and then installing switches which would enable resellers to introduce innovative and efficient services of benefit to the public. As a result, cellular resellers like CSI and CTI are rapidly losing their ability to stay competitive in the market. Further delay not only means a loss of hundreds of thousands of dollars which they have already invested in the development of a reseller switch; substantial delay could also jeopardize their very survival. Substantial delay, in other words, becomes tantamount to a denial of CSI/CTI's petition -- with one critical difference: CSI/CTI will not have any right to judicial review of that denial.

CSI and CTI therefore urge the Commission to act as quickly as possible in disposing of CSI/CTI's Petition for Reconsideration. Since CSI and CTI have already had numerous conversations with the Commissioners and the staff with respect to the matter, it should be possible to make a determination by February 15, 1996. In the absence of any such action, CSI and CTI will feel compelled to seek appropriate relief in court through a mandamus action. In the meantime, two copies of this letter will be placed in the record in the above-referenced proceeding.

Sincerely,

Dickstein, Shapiro & Morin, L.L.P.

Attorneys for Cellular Service, Inc. & ComTech, Inc.

By ______________________
Lewis J. Paper

LJP/efs:ecm

cc: The Honorable James H. Quello
The Honorable Andrew C. Barrett
The Honorable Susan Ness
The Honorable Rachelle Chong
Michelle Farquhar
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Corrected Version

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
Regulatory treatment of Mobile Services	)	

To: The Commission

PETITION FOR RECONSIDERATION

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May 19, 1994

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Summary

Cellular Service, Inc. ("CSI") and ComTech, Inc. ("ComTech") resell cellular service in California. CSI and ComTech request that the Commission reconsider its Second Report and Order to (1) recognize the right of cellular resellers to interconnect with the facilities of the FCC-licensed cellular carriers and (2) to require that that interconnection be made available under reasonable terms and conditions.

CSI, ComTech, and similarly-situated cellular resellers do not have switches or other facilities of their own. For that reason, CSI, ComTech and other cellular resellers are limited in the services they can provide. CSI and ComTech, as well as other cellular resellers, have developed plans for switches which will enable resellers to provide current services in a more cost-efficient manner and to introduce new services not currently available to cellular subscribers. Installation of the switches and other facilities, however, requires interconnection with the Mobile Telephone Switching Office ("MTSO") of the FCC-licensed cellular carriers.

Section 201 of the Communications Act of 1934 governs the right of all common carriers to interconnection. The Second Report and Order acknowledged that cellular resellers like CSI and ComTech are common carriers. CSI and ComTech also satisfy the second requirement of Section 201 for interconnection: their proposed service is necessary and desirable in the public interest. In making this latter determination, the Commission

need only find that the interconnection will serve the carrier's need without causing any harm to the connecting carrier's operations. Interconnection is plainly needed to facilitate service by CSI, ComTech and other cellular resellers; and no reseller is proposing to install any switch or take any other action which will cause any harm to a connecting carrier.

The Commission nonetheless decided to defer the question of whether cellular resellers and other providers of Commercial Mobile Radio Service ("CMRS") have a right to interconnect with other CMRS providers (such as FCC-licensed cellular carriers). That deferral cannot be squared with the Communications Act of 1934, the Omnibus Budget Reconciliation Act of 1993, the Commission's prior pronouncements, or the public interest. The Commission has already acknowledged that the cellular market is not competitive. Deferral of the interconnection issue for cellular resellers will facilitate the FCC-licensed cellular carriers' dominance of the mobile communications market since it is not clear when other CMRS providers (such as those offering Enhanced Specialized Mobile Radio Service and Personal Communications Services) will materialize. Both the Congress' and the Commission's avowed interest in promoting competition requires that cellular resellers' right to interconnection be recognized now.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act Regulatory treatment of Mobile Services	)	GN Docket No. 93-252

To: The Commission

PETITION FOR RECONSIDERATION

Cellular Service, Inc. ("CSI") and ComTech, Inc. ("ComTech"), acting pursuant to Section 1.429 of the Commission's rules, hereby petition for reconsideration of the Second Report and Order, 9 FCC Rcd 1411 (1994), to request that the Commission require (1) that all FCC-licensed cellular carriers provide interconnection to resellers of cellular service who propose to install their own switches and other facilities and (2) that the terms and conditions for such interconnection conform with existing policies and the principles adopted in the Second Report and Order to govern interconnection by providers of commercial mobile radio services ("CMRS") with local exchange carriers ("LECs").

Introduction

CSI and ComTech resell cellular service in California. The instant petition for reconsideration concerns the need of CSI, ComTech, and other similarly-situated cellular resellers to interconnect their own switches with FCC-licensed cellular carriers in order to preserve and enhance resale cellular service to the public. Without immediate recognition of the right of cellular resellers to interconnect under reasonable terms and conditions, the survival of cellular resellers -- in many markets the only present competitors of the FCC-licensed carriers -- will be in serious jeopardy. The instant petition for reconsideration is thus designed to advance the avowed goals of Congress and the Commission in promoting competition in the provision of mobile communications services.

The Second Report and Order acknowledged that cellular resellers are CMRS providers subject to FCC jurisdiction. At the same time, the Commission deferred the question whether cellular resellers, or any CMRS providers, are entitled to interconnection with other CMRS providers. Instead, the Commission decided to pursue that question in a notice of inquiry to be issued at a later date.

However reasonable the Commission's deferral may be with respect to Personal Communications Services ("PCS"), Enhanced Specialized Mobile Radio ("ESMR") and other new CMRS providers -- which are either non-existent or in nascent stages of development -- the Commission's action cannot be justified with respect to cellular resellers. Indeed, the Commission's refusal to order interconnection for cellular resellers is inconsistent with the Communications Act of 1934, the Omnibus Budget Reconciliation Act of 1993, the Commission's prior pronouncements, and the public interest. Reconsideration is therefore required.[1]

I. Background

CSI was founded as a cellular resale business in 1983. CSI possesses a certificate of public convenience from the California Public Utility Commission ("PUC") and has approximately 25,000 subscribers in southern California.

ComTech also has a certificate of public convenience from the California PUC. ComTech was founded in 1984 and currently provides cellular resale service to approximately 36,000 subscribers in northern California.

CSI and ComTech resell service which is obtained from FCC-licensed cellular carriers on a wholesale basis. Since they do not have their own switching facilities in place, CSI and ComTech are limited in the services they can provide to their respective subscribers.

Both CSI and ComTech have plans to install their own switches to interconnect with the LECs and the Mobile Telephone Switching Office ("MTSO") of the FCC-licensed cellular carriers. Use of the switches would enable CSI and ComTech to assume responsibility for services currently provided by the FCC-

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[1]It should be emphasized that the instant petition does not address the rights or needs of interconnection for other CMRS providers (such as those who intend to offer PCS) to CMRS providers. Although the analysis in the instant petition may be relevant to disposition of those latter issues, the focus of the instant petition is the need of cellular resellers to interconnect with FCC-licensed cellular carriers.

licensed cellular carriers and to introduce new services not currently available to any cellular subscriber.

The reseller switch would be installed between the MTSO and the LEC's facilities. The reseller switch and its associated data bank would administer the reseller's own NXX codes, record and validate all pertinent information related to a subscriber's calls, perform all functions necessary to route calls through local and interexchange networks (and, in the case of incoming calls, the MTSO), and provide data required to generate subscriber bills. Use of the switch would also enable CSI and ComTech to introduce innovative services, such as Incoming Call Screening, Distinctive Call Signaling, Priority Call Waiting, and Custom Directory Service. A description of the services that could be provided over a cellular reseller's switch are described with greater particularity in the annexed testimony of Ralph L. Widmar, a telecommunications management consultant who testified on behalf of CSI before the California PUC.

CSI and ComTech have been developing plans for installation of a switch for many years and are now poised to install the switch upon recognition of their legal right to do so. Other cellular resellers around the country are similarly eager to provide facilities-based service. If given the right to interconnect, CSI, ComTech, and other similarly-situated cellular resellers will be able to make the benefits of their facilities-based service available to the public and improve the level of competition in the mobile communications market.

II. Reconstruction Required

A. Cellular Resellers are Entitled to Interconnection with FCC-Licensed Cellular Carriers

Congress recognized the importance of interconnection for CMRS providers when it enacted the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act"), P.L. 103-66 (August 10, 1993). The Report of the House Budget Committee, for example, states that "[t]he Committee considers the right to interconnect an important one which the Commission shall seek to promote, since interconnection serves to enhance competition and advance a seamless national network." House Report No. 103-111, 103 Cong., 1st Session 261 (May 25, 1993). The new Section 332(c)(1)(B) added by the Budget Act further provides that, "[u]pon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of Section 201 of this Act." However, that new provision does not change the Commission's authority to order interconnection under Section 201: "Except to the extent that the Commission is required to respond to such a request [for interconnection], this subparagraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to this Act." 47 U.S.C. §332(c)(1)(B). Therefore, the interconnection rights of any CMRS provider -- including cellular resellers -- must be determined under Section 201 of the Communications Act of 1934, 47 U.S.C. §201.

Section 201 states, in pertinent part, as follows:

> (a) It shall be the duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable request therefor; and, in accordance with the orders of the Commission, in cases where the Commission, after opportunity for hearing, finds such action necessary <u>or</u> desirable in the public interest, to establish physical connections with other carriers, to establish through routes and charges applicable thereto in the divisions of such charges, and to establish and provide facilities and regulations for operating such through routes.
>
> (b) All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful. . .

47 U.S.C. §201 (emphasis added). Section 201 thus establishes two basic criteria which must be satisfied to justify a Commission order for interconnection: (1) the request must be from a common carrier; and (2) the request must be "necessary or desirable" to serve the public interest.

The Commission has already determined that cellular resellers satisfy the first requirement. The <u>Second Report and Order</u> concludes that "mobile resale service is included within the general category of mobile services as defined by Section 3(n) and for purposes of regulation under Section 332 . . ." <u>Second Report and Order</u>, 9 FCC Rcd at 1425. Cellular resellers also satisfy the second requirement to justify interconnection under Section 201: interconnection is necessary to provide the services contemplated by cellular resellers like

CSI and ComTech and, in any event, is "desirable" to serve the public interest. This latter point warrants elaboration.

As explained above, interconnection is needed to facilitate and improve the cellular resale services offered to subscribers. The reseller switch will not only enable cellular resellers like CSI and ComTech to provide services on a more cost-efficient basis (and therefore at lower cost for the subscriber); of equal, if not greater importance, use of a switch will enable a cellular reseller to offer innovative services in a cost-effective manner.

There is no reasonable basis upon which the Commission could conclude that interconnection for cellular resale does not satisfy the requirements of Section 201. It is settled that a telephone customer has a right "reasonably to use his telephone in ways which are privately beneficial without being publicly detrimental." Hush-A-Phone v. United States, 238 F.2d 266, 269 (D.C. Cir. 1956). Accord Carterfone, 13 FCC2d 420, 424, recon. denied, 14 FCC2d 571 (1968) (subscriber is free to connect devices to the telephone system which are of value to the customer as long as the connection does not adversely affect the telephone company's operations). Although those cases focused on Section 201(b), the Commission has employed that same standard in deciding the scope of a common carrier's right of interconnection under Section 201(a). AT&T, 60 FCC2d 939 (1976).

In AT&T, the Commission concluded that AT&T could not reasonably refuse to provide interconnection to another carrier for private line service. In reaching that conclusion, the

Commission relied on three principles drawn from Hush-A-Phone and Carterfone:

> First, a customer must not be unreasonably denied the right to use the telephone system to meet his needs. Second, the "public detriment" to be avoided in cases of interconnection is to be measured in terms of technical harm to the telephone system or economic impact which adversely affects the ability of a carrier adequately to serve the public, or both. Third, a tariff restriction on interconnection purporting to protect against technical or economic harm is unreasonable if it assumes a priori that such harm will result.

60 FCC2d at 943. In outlining the foregoing principles, the Commission acknowledged that Hush-A-Phone and Carterfone applied Section 201(b) and that interconnection rights are governed by Section 201(a). The Commission observed, however, that the distinction was one without a difference:

> The rationale of the Carterfone line of cases turns on whether a particular tariff restriction unduly hampers the free exercise of customer choice or, stated another way, the Section 201 obligation of a carrier to provide communications services upon a reasonable request therefor. It makes no difference conceptually that the principles were developed with respect to the connection of customer-supplied devices while here we are concerned essentially with the connection of AT&T private line service to services provided by other carriers. The language of Section 201 of the Act is general and embraces the interconnection of private line services as well as terminal devices. . . .

60 FCC2d at 943. In short, a carrier's request for interconnection is reasonable if the interconnection will serve the carrier's need without harming the connecting carrier's operations.

The reseller switch proposed by CSI, ComTech, and other cellular resellers easily satisfies that standard. The switch will enhance the reseller's service to the public, and resellers are prepared to insure that the switch is technically compatible with the FCC-licensed cellular carrier's MTSO.[2]

Nor can there be any doubt that the cellular reseller's enhanced service is in the public interest. From the beginning, the Commission has recognized resellers of common carrier service to be common carriers whose service benefits the public. See Resale and Shared Use of Common Carrier Services and Facilities, 60 FCC2d 261 (1976), recon. denied, 62 FCC2d 588 (1977), aff'd sub nom., AT&T v. FCC, 572 F.2d 17 (2nd Cir.), cert. denied, 439 U.S. 875 (1978). Resale and Shared Use of Common Carrier Domestic Public Switch Network Services, 83 FCC2d 167 (1980). In establishing interconnection policies for services other than cellular, the Commission has never distinguished between facilities-based carriers and resellers. E.g. Specialized Common Carrier Services, 29 FCC2d 850, 940 (1970), recon. denied, 31 FCC2d 1106 (1971), aff'd sub nom., Washington Utilities and Transportation Commission v. FCC, 513 F.2d 1142 (9th Cir.), cert. denied, 423 U.S. 836 (1975) (interconnection ordered for specialized common carriers); AT&T, 91 FCC2d 568 (1982) (ENFIA

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[2] Indeed, cellular carriers have allowed other parties to interconnect at the MTSO at reasonable terms and conditions without any claim of incompatibility or potential harm to the network. For example, United Parcel Service has been allowed for several years to interconnect a networking device to the MTSOs of numerous cellular carriers throughout the nation. Other examples of interconnection undoubtedly exist. Cellular carriers should not be allowed to provide interconnection to certain parties, who may not be competitors, and uniformally deny interconnection to cellular resellers, who are competitors.

tariff applies to resellers); <u>WATS-Related and Other Amendments of Part 69 of the Commission's Rules</u>, 59 RR2d 1418 (1986), <u>recon. denied</u>, 2 FCC Rcd 245 (1987) (resellers of interexchange service pay the same access charges as facilities-based interexchange carriers).

The Commission has similarly found cellular resale to be in the public interest. As the Commission explained in reaffirming its resale policy for cellular, "Resale restrictions were prohibited as a means of policing price discrimination, rectifying potential competitive advantages of the wireline providing service first, and providing some degree of secondary market competition." <u>Cellular Resale Policies</u>, 6 FCC Rcd 1719, 1730 n.67 (1991).

To be sure, the FCC-licensed cellular carriers (and other CMRS providers who do not want the burden of interconnection obligations) have argued and will argue that resale interconnection rights are unwarranted. But those arguments cannot obscure one basic and undisputed fact: cellular resale interconnection will further competition without harming the FCC-licensed carrier's MTSO. Hence, the cellular reseller's right to interconnection must be recognized. <u>See</u> <u>Bell Telephone Company of Pennsylvania v. FCC</u>, 503 F.2d 1250, 1270-71 (3rd Cir. 1974) (Commission finding that interconnection would facilitate the entry of specialized carriers supports Commission's order for interconnection).

B. No Basis to Defer Interconnection for Cellular Resellers

The Second Report and Order acknowledges that interconnection obligations for CMRS providers could provide public benefits. Thus, the Second Report and Order states that "PCS providers may wish to interconnect with cellular facilities, or vice versa, which could also allow for the advantages of interconnecting with a LEC. Also, we do not wish to encourage a situation where most commercial traffic must go through a LEC in order for subscriber to send a message to a subscriber of another commercial mobile radio service." Second Report and Order, 9 FCC Rcd at 1449. The Commission nonetheless decided to defer consideration of the question whether FCC-licensed cellular carriers and other CMRS providers should be required to offer interconnection to cellular resellers and other CMRS providers.

This deferral cannot be squared with the Commission's obligations under Section 201, the public interest, or, in the case of cellular resellers, the need for immediate action. In an attempt to justify its deferral of action, the Commission stated that its "analysis of this issue must acknowledge that CMRS providers do not have control over bottleneck facilities." Second Report and Order, 9 FCC Rcd at 1499. In the case of cellular resellers, that statement is not true. As explained above, FCC-licensed cellular carriers maintain facilities which are essential to the services which CSI, ComTech and other cellular resellers want to provide. Without access to the FCC-licensed cellular carriers' MTSOs, CSI, ComTech, and other cellular resellers will be unable to provide the kind of services which consumers demand in an era of growing technological expectations. The FCC-licensed cellular carriers -- who exercise dominant power in the provision of cellular service -- therefore do control bottleneck facilities.[3]

In any event, FCC-licensed cellular carriers' control of bottleneck facilities is not a prerequisite to the cellular reseller's right to interconnection under Section 201(a). As explained above, a connecting carrier need only show that the interconnection will be privately beneficial without being

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[3] The cellular resellers' situation thus satisfies the Commission's own definition of "bottleneck facilities." Competitive Carrier Rulemaking, 85 FCC2d 1, 21-22 (1980) (subsequent history omitted) ("[c]ontrol of bottleneck facilities is present when a firm or a group of firms has sufficient command over some essential commodity or facility in its industry or trade to be able to impede new entrants" and "describes the structural characteristic of a market that new entrants must either be allowed to share the bottleneck facility or fail"). The cellular resellers' situation also satisfies the "essential facilities doctrine" in antitrust law. See MCI Communications v. AT&T, 708 F.2d 1081, 1132-33 (D.C. Cir. 1983) (antitrust liability will be imposed on a competitor which has monopoly power and denies access to an essential facility which would be infeasible for the proposed competitor to duplicate). It should also be noted that none of the comments in the instant proceeding provided any facts which disputes the cellular resellers' need for interconnection with an FCC-licensed cellular carrier's MTSO. The comments which addressed the issue simply made bald statements without any supporting explanation. E.g. Comments of McCaw Cellular Communications, Inc. (November 8, 1993) at 32 ("[u]nlike the LECs, providers of commercial mobile services enjoy neither monopoly control over essential facilities nor the market dominance that would give them the incentive and ability to create substantial barriers to entry"); Reply Comments of PacTel Corporation (November 23, 1993) at 13 ("CMS providers do not control bottleneck facilities"); Reply Comments of the Cellular Telecommunications Industry Association ("CTIA") (November 23, 1993) at 22 ("absent a monopoly, a firm is free to unilaterally choose to deal or decline to deal with others").

publicly detrimental. None of the comments provides any legal authority to support any other standard.[4]

In support of its decision to defer consideration of the CMRS interconnection issue, the Commission also relied on its observation that "the comments on this issue are so conflicting and the complexities of the issue warrant further examination in the record . . ." Second Report and Order, 9 FCC Rcd at 1449. This observation cannot withstand reasonable scrutiny. To be sure, some parties -- principally the FCC-licensed cellular carriers and their representatives -- opposed any interconnection for cellular resellers. But those comments were premised on the inaccurate claim that the cellular market is competitive and that no party has the incentive or power to deny cellular resellers' access to needed facilities. E.g. Comments of CTIA (November 8, 1993) at 42 (no need to impose interconnection requirements because "commercial mobile services are operating in a competitive environment"); Comments of GTE (November 8, 1993) at 22 ("[t]he competitive nature of the marketplace should assure that service providers are fully responsive to any customer requirements for interconnected service").

In fact -- as the Second Report and Order concludes -- the cellular services market is not fully competitive. Second Report and Order, 9 FCC Rcd 1468. That conclusion comports with CSI's

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[4]In its reply comments, for example, CTIA relied on a decision by the United States Supreme Court which was rendered in 1919 -- 15 years before Section 201 was enacted. See Reply Comments of CTIA (November 23, 1993) at 22, citing United States v. Colgate & Co., 250 U.S. 300 (1919).

and ComTech's experience and expectation: FCC-licensed cellular carriers will do everything they can to deny cellular resellers access to needed facilities. And, while there is hope that ESMR and PCS providers will make the market more competitive, there is no assurance as to when -- or if -- that hope will materialize. In the meantime, CSI, ComTech and other cellular resellers have a present need for interconnection; and with such interconnection they can provide much-needed competition to the FCC-licensed cellular carriers now -- not at some distant point in the future.

The Commission should have no illusions about the practical consequences of any decision to defer consideration of the CMRS interconnection issue in a notice of inquiry at some later and unspecified date. That notice of inquiry will take years to resolve.[5] In the interim, FCC-licensed cellular carriers will undoubtedly be encouraged by the Commission's silence to deny cellular resellers access to needed facilities and thus continue to amass a dominant share of the market. For their part, CSI, ComTech, and other frustrated cellular resellers will be forced to rely on the FCC complaint process -- a blackhole from which no decision is likely to emerge in the near future. Again, the

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[5]It bears noting that the Commission is suffering from a shortage of staff and other resources. Even the best of intentions cannot overcome that reality. There is no better illustration of the impact of that shortage than the issuance of PCS licenses. Despite a congressional mandate that the Commission commence the issuance of PCS licenses by May 1994, and despite the long hours of its dedicated staff, the Commission will be unable to commence the PCS auction process until July or August 1994 -- approximately one year after Congress issued its deadline.

ineffectiveness of the complaint process is not a reflection of Commission incompetence or indifference. Rather, it is a question of resources. Unless and until the notice of inquiry produces a new policy and/or new rules, the Commission's overworked staff will have no guidance in trying to resolve any cellular reseller's complaint about interconnection. There is no better illustration of that likelihood than the cellular reseller complaints cited in Second Report and Order -- cases which have been languishing at the Commission since 1991. See Second Report and Order, 9 FCC Rcd at 1499 n. 481.

The appropriate resolution of the interconnection issue for cellular resellers can be guided by the Commission's own pronouncements. In the Second Report and Order, the Commission asserted that success in the marketplace "should be driven by technological innovation, service quality, competition-based pricing decisions, and responsiveness to consumer needs -- and not by strategies in the regulatory arena." Second Report and Order, 9 FCC Rcd at 1420. That observation comports with Congress' direction to the Commission to adopt regulations which "will enhance competition among providers of commercial mobile services." 47 U.S.C. §332(c)(1)(C). To that end, the Commission should (1) explicitly recognize the right of cellular resellers to interconnect with FCC-licensed cellular carriers, (2) direct FCC-licensed cellular carriers to honor the same principles applicable to the LECs in providing interconnection to other carriers (Second Report and Order, 9 FCC Rcd at 1498), and (3) instead of adopting detailed rules, have the parties adhere to the existing framework for interconnection decisions which requires resolution within six (6) months through good faith negotiations. See Policy Statement of Interconnection of Cellular Systems, 59 RR2d 1283 (1986). That result would comport with the law and facilitate the kind of competition envisioned by Congress and the Commission.

Conclusion

WHEREFORE, in view of the foregoing, it is respectfully requested that the Commission reconsider its Second Report and Order, and, upon reconsideration, recognize that cellular resellers have a right of interconnection under Section 201 and that such interconnection should be provided in accordance with established policies.

Respectfully submitted,

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Cellular Service, Inc.
and ComTech, Inc.

By: ______________________
Lewis J. Paper
David B. Jeppsen

Cellular Service, Inc.
Testimony of Ralph L. Widmar
Reseller Switch Proposal
August 30, 1991
I.88-11-040

1Q. Please state your name, title, and business address.

A. My name is Ralph L. Widmar. I am a partner in Network Intelligence, which is a telecommunications management consulting firm I founded in 1985. My business address is 460 Alma Street, Suite 100, Monterey, CA 93940.

2Q. Please give us a brief resume of your educational background and professional qualifications.

A. I graduated from the University of Colorado in 1978 with a degree in Communications. I went to work for Mountain Bell as a communications consultant and held a variety of positions with Mountain Bell and AT&T. My last position with Mountain Bell was a corporate product and market manager in the Public Services are. I also worked with AT&T and Bell Laboratories on a variety of projects.

3Q. What other work experience do you have in the field of telephony?

A. Upon leaving the Bell system in 1982, prior to divestiture, I became involved with a long distance telephone company that was involved in the resale of and shared use of WATS lines. As a regional vice president of operations, it was my function to coordinate the installation of tandem switching equipment and of telecommunications transmission facilities. I also designed networks and worked on billing systems. I subsequently moved to Monterey, CA in 1984 and became the Operation Manager for Telemarketing Communications of Monterey, a